

FIRST REGULAR SESSION

SENATE BILL NO. 400

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLINDT.

Read 1st time February 22, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1694S.011

AN ACT

To amend chapter 250, RSMo, by adding thereto eleven new sections relating to the wholesale water and sewer authority act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 250, RSMo, is amended by adding thereto eleven new sections, to be known as sections 250.300, 250.303, 250.306, 250.309, 250.312, 250.315, 250.318, 250.321, 250.324, 250.327, and 250.330, to read as follows:

250.300. 1. Sections 250.300 to 250.330 shall be known and may be cited as the "Wholesale Water and Sewer Authority Act".

2. As used in sections 250.300 to 250.330, the following terms mean:

(1) "Authority", a wholesale water and sewer authority organized under sections 250.300 to 250.330;

(2) "Obligations", bonds, notes, or other agreements issued by the authority in accordance with sections 250.300 to 250.330 to finance or refinance the costs of projects;

(3) "Project", facilities and distribution systems used for wholesale water supply or distribution, or facilities and collection systems used for wholesale wastewater treatment or collection;

(4) "Provider", any political subdivision of the state owning or operating, or which has the authority to own and operate, a water system or a wastewater system, or both, which petitions for the formation of an authority or is added to the membership of an authority after such authority is formed.

250.303. 1. An authority may be created to fund, promote, plan, design, construct, improve, acquire, maintain, and operate one or more

projects or to assist in such activity.

2. To create an authority, two or more providers shall file a petition in the circuit court of any county in which all or a portion of a project is proposed to be located requesting creation of an authority.

3. The petition shall set forth:

(1) A recital that the governing bodies of the providers have approved filing of the petition. A resolution or ordinance of each such governing bodies calling for the establishment of the authority shall be attached to the petition;

(2) A general description of the initial project or projects proposed to be undertaken by the authority, including a description of the approximate location thereof;

(3) The number of initial members of the board of directors of the authority;

(4) The name of the proposed authority;

(5) A proposal for initial funding for the authority in accordance with sections 250.300 to 250.330; and

(6) A request that the court enter its judgment that the authority is thereby formed as a political subdivision of the state.

4. Upon the filing of a petition, the circuit clerk shall provide notice to the public by causing one or more newspapers of general circulation serving the proposed providers to publish once a week for four consecutive weeks a notice in substantially the following form:

**"NOTICE OF PETITION FOR THE CREATION AND FUNDING
OF A WHOLESALE WATER AND SEWER AUTHORITY**

Notice is hereby given to all persons residing in (here specifically describe the proposed providers), within the state of Missouri, that a petition has been filed requesting that a wholesale water and sewer authority by the name of "..... Wholesale Water and Sewer Authority" be formed for the purpose of developing the following project: (here summarize the proposed project or projects). A copy of this petition is on file and available at the office of the clerk of the circuit court of County, located at, Missouri. You are notified to join in or file your own petition supporting or answer opposing the creation of the wholesale water and sewer authority and requesting a declaratory judgment, as required by law, no later than the day of, 20... You

may show cause, if any, why such petition is defective or why the proposed wholesale water and sewer authority or its funding method, as set forth in the petition, is illegal, unconstitutional, unjust, or unreasonable and should not be approved by this court.

.....

Clerk of the Circuit Court of County".

5. The circuit court may also order a public hearing on the question of the creation and funding of the proposed authority, if deemed appropriate by the court, under such terms and conditions as the court deems appropriate. If a public hearing is ordered, notice of the time, date, and place of the hearing shall also be given in the notice specified in subsection 4 of this section. The court, for good cause shown, may continue the case or hearing on the case from time to time until the final disposition.

250.306. 1. Any resident of any provider may join in or file a petition supporting or answer opposing the creation of the authority and seeking a declaratory judgment respecting such same issues within thirty days after the date notice is last published by the circuit clerk.

2. The court shall hear the case without a jury. If the court shall thereafter determine the petition is defective or the proposed authority is illegal, unconstitutional, unjust, or unreasonable, the court shall enter a declaratory judgment to that effect and shall refuse to make the certifications requested in the pleadings. If the court determines that any proposed funding method is illegal, unconstitutional, unjust, or unreasonable, the court shall enter a judgment striking such funding method in whole or in part. If the court determines the petition is not legally defective and the proposed authority and method of funding is not illegal, unconstitutional, unjust, or unreasonable, the court shall enter a judgment to such effect and declare the authority organized as a political subdivision of the state.

3. Any party that files an answer or petition may appeal the circuit court's order or declaratory judgment in the same manner as provided for other appeals.

250.309. The costs of filing and defending the petition and all publication and incidental costs incurred in obtaining circuit court certification of the petition shall be paid by the petitioner. If an

authority is organized under sections 250.300 to 250.330, the petitioner may be reimbursed for such costs out of the revenues received by the authority.

250.312. Following approval of the formation of the authority by the court, an authority may add to its membership providers not joining in the original petition. Such additional providers may be added in accordance with the procedure prescribed in this section. The authority shall hold a public hearing regarding the proposed additional provider and shall provide notice to the public by causing one or more newspapers of general circulation serving the existing providers and proposed additional provider to publish once a week for two consecutive weeks prior to the week in which the public hearing is held a notice in substantially the following form:

"NOTICE OF NEW PROVIDER FOR THE WHOLESALE WATER AND SEWER AUTHORITY

Notice is hereby given to all persons residing in (here specifically describe the applicable providers), within the state of Missouri, that the "..... Wholesale Water and Sewer Authority" will be holding a public hearing on (insert date) at (insert time) regarding the following: (here summarize the addition of proposed providers)."

The authority shall receive all public comments at the public hearing and following the closure of the hearing may by a vote of a majority of the board of directors add such provider to the membership of the authority.

250.315. The presiding officer, or the presiding officer's designee, of each provider shall, with the consent of the governing body of the provider, appoint one member and an alternate to the board of directors. Each director or alternate shall reside within the boundaries of the provider appointing such director or alternate and each such provider may remove the director or alternate representing such entity with or without cause. Each director or alternate shall serve until removed by the provider appointing such director or alternate, or until disqualified.

250.318. 1. The board shall possess and exercise all of the authority's legislative and executive powers, as such powers are described in sections 250.300 to 250.330.

2. The board shall meet within thirty days after the formation of the authority. At the first meeting, the board shall elect a chair from its members. The chair shall preside at all meetings of the board and, except as otherwise delegated by the board, shall execute all legal instruments of the authority. The chair shall be the principle executive officer of the authority with full responsibility for the planning, operations, and administrative affairs of the authority and the coordination thereof under policies and programs approved by the board from time to time and shall perform such other duties as the board may prescribe. The chair may conduct the ordinary and customary business of the authority between meetings of the board.

3. The board shall appoint an authority secretary and such other officers and employees as it deems necessary.

4. At the first meeting, the board shall define by resolution the first and subsequent fiscal years of the authority and may adopt a corporate seal.

5. A simple majority of the board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the board and approve any board resolution, except a resolution to authorize obligations that shall require the approval of a majority of the entire board of directors.

6. Each director shall devote such time to the duties of the office as the faithful discharge thereof may require and shall not be compensated, except that a director may be reimbursed for actual expenses incurred in the performance of the director's duties on behalf of the authority.

250.321. The board of directors of the authority shall have the following powers:

(1) To accept by gift or grant from any person or entity, or from this state, any other state, or any political subdivision or municipality thereof, or from the United States any moneys or property or any interest therein for the uses and purposes of the authority and to hold title thereto in trust or otherwise and to bind the authority to apply the same according to the terms of such gift or grant;

(2) To sue and be sued;

(3) To enter into franchises, contracts, and agreements with this

state, any other state, or the United States, or any municipality, political subdivision, or authority thereof, or any of their agencies or instrumentalities, or any public or private person, partnership, association, or corporation of this state, any other state, or the United States to fund, promote, plan, design, develop, construct, acquire, maintain, or operate any project for the wholesale supply of water, including the purchase of guaranteed minimum or maximum quantities, or for any other service rendered to, for, or by the authority for such term of years as the board of directors of the authority may approve; and any such municipality, political subdivision, authority, or any of their agencies or instrumentalities, and any such public or private person, partnership, association, or corporation is hereby authorized to enter into contracts and agreements with such authority for such term of years as may be approved by such persons or the governing bodies of such entities, as applicable, to fund, promote, plan, design, develop, construct, acquire, maintain, or operate any facility for the wholesale supply of water, including the purchase of guaranteed minimum or maximum quantities, the provision of wastewater services, including the purchase of guaranteed minimum or maximum quantities, or for any other service rendered to, for, or by the authority;

(4) To borrow money and evidence the same by obligations as hereinafter provided in sections 250.300 to 250.330, and to refund the same by the issuance of refunding obligations;

(5) To acquire land and interests in land and other property by sale, lease, gift, purchase, exchange, or eminent domain, such power of eminent domain to be exercised in the furtherance of any authorized purpose of the authority and in accordance with the procedures set forth in chapter 523, RSMo, and to sell, lease, abolish, or otherwise dispose of such land, interests therein, or other property;

(6) To acquire by purchase or lease facilities for the wholesale production, distribution, and utilization of water and the wholesale collection and treatment of wastewater;

(7) To operate and maintain any of the facilities owned and acquired by the authority;

(8) To establish a system of fees and charges for services provided by the authority;

(9) To provide wholesale water service and wholesale wastewater service to providers utilizing the projects acquired or constructed by the authority, and to furnish retail water service and sewer service to end users, provided that in the case of provision of retail water or sewer service the authority receives the prior written consent, whether in blanket form or otherwise, of a provider or other political subdivision in this state in which the end user is located, and further provided that in the case of provision of retail service, such service is provided as incident to an agreement between the authority and one or more property owners related to acquisition of real property or rights therein for the purpose of constructing a portion of a project to be owned by an authority;

(10) To have the general management, control, and supervision of all the business, affairs, property, and facilities of the authority, and of the construction, installation, operation, and maintenance of authority improvements, and to establish regulations relating thereto;

(11) To hire and retain agents, employees, engineers, and attorneys and to determine their compensation;

(12) To adopt and amend rules and regulations not in conflict with the constitution and laws of this state that are necessary for the carrying on of business, objects, and affairs of the board of directors and of the authority;

(13) To invest the funds of the authority not needed for current operations in either open time deposits or certificates of deposit secured under sections 110.010 and 110.020, RSMo; or in bonds of the state of Missouri, the United States, or any wholly owned corporation of the United States, or in other short-term obligations of the United States, or any obligation or instrument described in subdivisions (1) to (12) of subsection 1 of section 30.270, RSMo; and

(14) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of sections 250.300 to 250.330.

250.324. 1. In addition to the other powers granted the authority and providers in sections 250.300 to 250.330, providers or any other

political subdivision of this state owning or operating, or which has the authority to own and operate, a water system or a wastewater system, or both, may enter into purchase agreements with the authority for the purchase, sale, exchange, or transmission of wholesale water or wastewater service whereby they are obligated to make payments in amounts that shall be sufficient to enable the authority to meet its expenses, interest and principal payments, whether at maturity or upon sinking fund redemption, for its obligations, reasonable reserves for debt service, operation, and maintenance, and renewals and replacements, and the requirements of any rate covenants with respect to debt service coverage contained in any resolution, trust indenture, or other security instrument. Purchase agreements may contain such other terms and conditions as may be determined by the parties, including provisions obligating payments for wholesale water or wastewater service irrespective of whether such wholesale water or wastewater services is produced or delivered, or collected or delivered to the authority, or whether any project contemplated by any such agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the services of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. Such agreement may provide that if one or more of the providers or users of any project or facility default in the payment of its obligations under any such agreement, the remaining providers or users who also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the wholesale water or wastewater service purchased by the defaulting provider or user.

2. The obligations of a provider or user of a project or facility under a purchase agreement with an authority or arising out of the default by any other provider or user with respect to such an agreement shall not be construed to constitute debt of the provider or user. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the provider or user, payable solely from revenues and other moneys derived by the provider or user from its utility and shall be treated as expenses of operating the utility.

250.327. 1. An authority may at any time authorize or issue

obligations for the purpose of paying all or any part of the cost of any project. Every issue of such obligations shall be payable from the net revenues of the wholesale water system, wholesale sewer system, or a combination thereof as the case may be, of the authority, including without limitation the proceeds of any agreement with any provider or user for the sale of wholesale water or wastewater services, and may be further secured by other property of the authority that may be pledged, assigned, mortgaged, or a security interest granted for such payment without preference or priority of the first obligations issued subject to any agreement with the holders of any other obligations pledging any specified property or revenues. Such obligations shall be authorized by resolution of the majority of the entire board of directors of the authority and, if issued by the authority, shall bear such date or dates and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify. Such obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest obligations, compound interest obligations, variable rate obligations, convertible obligations, or zero coupon obligations, be issued in such manner, be payable in such place or places and subject to redemption as such resolution may provide notwithstanding the provisions of section 108.170, RSMo. The obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the authority shall determine.

2. Any issue of authority obligations outstanding may be refunded at any time by the authority by issuing its refunding obligations in such amount as the authority may deem necessary. Such obligations may not exceed the amount sufficient to refund the principal of the obligations so to be refunded together with any unpaid interest thereon and any premiums, commissions, service fees, and other expenses necessary to be paid in connection with the refunding. Any such refunding may be effected either by sale of the refunding obligations and the application of the proceeds thereof to the payment of the obligations being refunded or by the exchange of the refunding obligations for the obligations being refunded with the consent of the holder or holders of the obligations being refunded. Refunding obligations may be issued regardless of

whether the obligations being refunded were issued in connection with the same project or a separate project and regardless of whether the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

3. Obligations issued under this section shall exclusively be the responsibility of the authority payable solely out of authority funds and property provided in sections 250.300 to 250.330 and shall not constitute a debt or liability of the state of Missouri or any agency or political subdivision of the state, or any of the providers or users. The authority shall not be obligated to pay such obligations with any funds other than those specifically pledged to repayment of the obligations. Any obligations issued by an authority shall state on their face that they are not obligations of the state of Missouri or any agency or political subdivision thereof other than the authority.

4. Obligations issued under this section, the interest thereon, or any proceeds from such obligations shall be exempt from taxation in the state of Missouri for all purposes except the state estate tax.

5. The authority may enter into funding or financing arrangements or any other contract or agreement with any person or business entity, or any federal, state, or local government agency or authority deemed necessary or desirable to fund, finance, or effectuate any project, including without limitation credit enhancement, credit support or interest rate agreements.

250.330. 1. Proceedings for the dissolution of an authority shall be substantially the same as proceedings for the formation of the authority, as follows: A petition describing the authority sought to be dissolved shall be filed with the clerk of the circuit court of the county wherein the petition to form the authority was filed. Such petition shall allege that further operation of the authority is inimicable to the best interests of the providers who are members of the authority, that the authority should in the interest of the public welfare and safety be dissolved, that an alternative for the services of the projects owned and operated by the authority is available and better able to serve the providers that are members of the authority, and such other information as may be useful to the court in determining whether the petition should be granted and a decree of dissolution entered. Such petition shall also

include a detailed plan for payment of all debt and obligations of the authority at the time of dissolution. Such petition shall be accompanied by a cash deposit of fifty dollars as an advancement of the costs of the proceeding and the petition shall be signed by a majority of the providers that are members of the authority. The authority shall be a party and, if the board of directors in its discretion determines that such dissolution is not in the public interest, the authority shall oppose such petition and pay all cost and expense thereof.

2. Upon the filing of the petition, the petition shall be presented to the circuit court and such court shall fix a date for a hearing on such petition as provided in this section. Thereupon, the clerk of the court shall give notice of the filing of the petition in some newspaper of general circulation in each of the providers that are members of the authority. The notice shall contain a description of the general purposes of the petition and shall set forth the date fixed for the hearing on the petition, which shall not be less than seven nor more than twenty-one days after the date of the last publication of the notice and shall be on some regular judicial day of the court wherein the petition is pending. Such notice shall be signed by the clerk of the circuit court and shall be published in three successive issues of a weekly newspaper or in twenty successive issues of a daily newspaper.

3. The court, for good cause shown, may continue the case or the hearing thereon from time to time until final disposition thereof.

4. Exceptions to the dissolution of an authority may be made by any voter of the providers that are members of the authority and by the authority as herein provided. Such exceptions shall be filed not less than five days prior to the date set for the hearing on the petition, and shall specify the grounds upon which the exceptions are filed and the court shall take them into consideration in passing upon the petition and shall also consider the evidence in support of the petition and in support of the exceptions made. Unless petitioners prove that all debts and financial obligations of the authority can be paid in full upon dissolution, the petition shall be dismissed at the cost of the petitioners.

5. If the court finds that it would not be to the public interest to dissolve an authority, the petition shall be dismissed at the costs of the petitioners. If, however, the court finds in favor of the petitioners, the

court shall enter its interlocutory decree of dissolution. The decree shall provide for the submission of the question to the voters of the authority in substantially the following form:

"Shall ... Wholesale Water and Sewer Authority be dissolved?".

6. The decree of dissolution shall not become final and conclusive until it shall have been submitted to the voters residing within the boundaries of each provider that is a member of the authority and until it shall have been assented to by a majority of two-thirds of the voters voting on the proposition. The decree shall provide for the submission of the question and shall fix the date thereof. The returns shall be certified by the election authorities to the circuit court having jurisdiction in the case and the court shall thereupon enter its order canvassing the returns and declaring the result of such election.

7. If upon canvass and declaration it is found and determined that the question shall have been assented to by a majority of two-thirds of the voters voting on such proposition, the court shall in such order declaring the result of the election enter a further order declaring the decree of dissolution to be final and conclusive. If, however, the court finds that the question had not been assented to by the majority required, the court shall enter a further order declaring such decree of dissolution to be void and of no effect. No appeal shall lie from any of the aforesaid orders. If the court declares the decree of dissolution to be final, as provided in this section, the clerk of the circuit court shall file certified copies of such decree of dissolution and of such final order with the secretary of state of the state of Missouri and with the recorder of deeds of the county or counties in which the authority does business and with the clerk of the county commission of the county or counties in which the authority does business.

8. Notwithstanding any other provision of this section to the contrary, no authority shall be dissolved until after all of its debts shall have been paid and the court in its decree of dissolution provides for the disposition of the property of the authority.